

REMARKS

In the Office Action mailed November 14, 2006, claims 1-20 stand rejected. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

Claims 1-20 are amended. No claims are cancelled. New independent claim 21 has been added. As such, claims 1-21 remain pending. Entry of the amendments to claims 1-20 and entry of new claim 21 are respectfully requested.

Also, submitted concurrently herewith is an Information Disclosure Statement to provide the Examiner a copy of WO 98/05753, identified and discussed on page 5 of the specification of the above-identified application. Entry and consideration of this Information Disclosure Statement is respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-13, 15, 18-20 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Applicants have amended claims 1-20 and the amendments to claims 1-20 include amendments to address this rejection. Applicants submit that the rejection under 35 U.S.C. §112 has therefore been overcome and should be withdrawn. Withdrawal of the rejection of Claims 1-13, 15, 18-20 under 35 U.S.C. §112, second paragraph, is respectfully requested.

REJECTION UNDER 35 U.S.C. §103

Claims 1-13 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2003/0215357 to Malterer *et al.* ("Malterer") in view of U.S. Patent No. 6,659,637 to Friedman ("Friedman"). This rejection is respectfully traversed.

Claims 14-18 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Friedman. This rejection is respectfully traversed.

Claims 18-20 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Friedman or, in the alternative stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over Friedman. This rejection is respectfully traversed.

The aforementioned rejections under 35 U.S.C. §102(b) and 35 U.S.C. § 103(a) will be considered collectively. In light of the following remarks, Applicants respectfully submit that claims 1-21 are allowable.

In an effort to advance prosecution, Applicants have amended independent claim 1 to recite an incubator including a plurality of superposed shaking units each including a horizontally disposed and individually controllable shaking platform, and at least one control unit to control the shaking movement of the shaking platform of each of the plurality of shaking units, wherein the shaking movement of the shaking platform of each shaking unit is controlled independently of each other shaking unit by the at least one control unit.

Also, in an effort to advance prosecution, Applicants have amended independent claim 14 to recite a shaking apparatus including a plurality of superposed shaking units located within a specimen storage device, and a control unit to control the shaking movement of the shaking platform of each of the plurality of shaking units, wherein the shaking movement of the shaking

platform of each shaking unit is controlled independently of each other shaking unit by the control unit.

A problem addressed by the Applicants' incubator and shaking apparatus, such as recited in amended claims 1 and 14, for example, is a significant disadvantage where all shaking planes are moved simultaneously by a common eccentric drive, and, therefore, movement of such shaking planes using such eccentric drive does not enable movement of individual superposed shaking planes while other shaking planes of the tower are at rest. Also, such eccentric drive provides the same intensity of shaking movement for all shaking planes. (*See* specification, page 1, paragraph 3)

Applicant's incubator and shaking apparatus therefore address the aforementioned problem by enabling shaking of specimens located in a specimen storage device individually and independently of each other. Therefore, according to aspects of the present invention, for example, specimens located at the specimen storage positions of the shaking units or in a specimen storage unit can be agitated independently of each other according to a motion sequence determined individually for each specimen. (*See* specification, page 1, the sixth full paragraph thereon)

Further, Applicant's incubator and shaking apparatus, according to aspects of the invention, provide that the shaking movement can be set and controlled for each individual shaking platform by the at least one control unit. Therefore, according to aspects of the invention, it is possible to supply a specimen storage device with different specimens and to move them, or not move them, according to their individual requirements as regards shaking movement and shaking duration. (*See* specification, page 4, the second full paragraph thereon)

It is respectfully submitted that neither Malterer nor Friedman disclose, teach or suggest an incubator including a plurality of superposed shaking units each including a horizontally disposed and individually controllable shaking platform, and at least one control unit to control the shaking movement of the shaking platform of each of the plurality of shaking units, wherein the shaking movement of the shaking platform of each shaking unit is controlled independently of each other shaking unit by the at least one control unit, as recited in amended claim 1.

Also, it is respectfully submitted that neither Malterer nor Friedman disclose, teach or suggest a shaking apparatus including a plurality of superposed shaking units located within a specimen storage device, and a control unit to control the shaking movement of the shaking platform of each of the plurality of shaking units, wherein the shaking movement of the shaking platform of each shaking unit is controlled independently of each other shaking unit by the control unit, as recited in amended claim 14.

Further, the Office action recognizes that Malterer does not disclose “a horizontally disposed shaking platform which may be individually controlled” and “a base unit” (Office action, page 11). Further, the Office action recognizes that Friedman only discloses a “single unit” (Office action, page 7).

Therefore, it is respectfully submitted it would not be obvious to combine the teaching of Malterer with that Friedman in that neither Malterer nor Friedman disclose, teach or suggest a plurality of superposed shaking units including a plurality of individually controllable shaking platforms located within a specimen storage device, such as included in an incubator, as recited in amended claim 1, or included in a shaking apparatus, as recited in amended claim 14, wherein the shaking movement of the shaking platform of each shaking unit is controlled independently of each other shaking unit by at least one control unit.

Accordingly, the asserted combination of the Malterer and Friedman references fails to teach each and every element recited in amended claim 1, and therefore does not establish a *prima facie* case of obviousness thereof. Claims 2-13 depend from claim 1, and are not *prima facie* obvious over Malterer combined with Friedman for at least the same reasons.

Also, accordingly, the asserted combination of the Malter and Friedman references, taken singly or in combination, fails to teach each and every element of amended claim 14, and therefore cannot render the same *prima facie* anticipated or obvious. Claims 15-20 depend from claim 14 and are allowable for at least the foregoing reasons.

Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection of claims 1-13 under 35 U.S.C. §103(a) and respectfully request reconsideration and withdrawal of the rejections of claims 14-20 under 35 U.S.C. §103(a) and 35 U.S.C. §102(b).

Reconsideration and allowance of Claims 1-20 and consideration and allowance of new claim 21 are respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and request that all objections and rejections be withdrawn, that all pending claims be allowed, and that the application be passed to issue. If, for any reason, the Examiner finds the application to be in other than condition for allowance, the Examiner is invited to contact the undersigned at 202-861-1737 in an effort to resolve any matter still outstanding before issuing another action.

In the event any extensions of time are required for this paper to be considered timely, Applicants hereby make a conditional petition therefor. Please charge any fee deficiencies and credit any overpayments to Deposit Account No. 50-2036 with reference to Attorney Docket No. 87333.3301.

Respectfully submitted,

BAKER & HOSTETLER LLP



S. Sahota

Registration No. 47,051

Date: April 16, 2007
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783